

## **PUBLIC MEETING MINUTES**

April 10, 2008

PUBLIC EMPLOYMENT RELATIONS BOARD  
1031 18th Street  
Sacramento, CA 95811

Chair Neuwald called the meeting to order at 10:00 a.m.

### **Members Present**

Karen L. Neuwald, Chair  
Sally M. McKeag, Member  
Robin W. Wesley, Member  
Tiffany Rystrom, Member  
Alice Dowdin Calvillo, Member

### **Staff Present**

Tami Bogert, General Counsel  
Les Chisholm, Division Chief, Office of the General Counsel  
Bernard McMonigle, Chief Administrative Law Judge  
Eileen Potter, Chief Administrative Officer (Excused)

### **Call to Order**

Chair Neuwald called the Board to order for a return to the open session of the February 7, 2008 Board meeting. She reported that the Board met in continuous closed session to deliberate on pending cases on the Board's docket, pending requests for injunctive relief, and pending litigation, as appropriate.

Since that open session in February, the Board has issued PERB Decision Nos. 1823a-H, 1940a-M, 1943-M, 1944-M, 1945, 1946, 1947-H, 1948, 1949-H, 1950-M and 1951, and Administrative Appeal Nos. Ad-370-H and Ad-371-S. In request for injunctive relief (I.R.) No. 539 (SEIU Local 1000 v. State of California (Department of Developmental Services & Office of Protective Services)), the request was withdrawn; I.R. No. 540 (SEIU Local 1000 v. State of California (Departments of Developmental Services & Office of Protective Services)), the request was denied; I.R. No. 541 (California Federation of Interpreters Local 39521 v. Los Angeles County Superior Court), the request was denied; I.R. No. 542 (California Correctional Peace Officers Association v. State of California (Department of Personnel Administration)), the request was denied; and I.R. No. 543 (Charles E. Ulmschneider v.

Los Banos Unified School District), the request was denied. A document containing a listing of the aforementioned decisions was made available at today's meeting.

Member Dowdin Calvillo at this time introduced her Legal Adviser, Erich Shiners. After asking Mr. Shiners to stand for recognition and expressing her pleasure in his joining the Board, Member Dowdin Calvillo briefly described his background. Mr. Shiners comes to PERB with both private and public sector labor law experience. Most recently he worked at Renne Sloan Holtzman Sakai LLP, a public law group, where he represented public sector and nonprofit employers in labor and employment litigation, arbitration and negotiations. He was a law clerk at Weinberg, Roger, Rosenfeld, and a judicial extern for the Honorable Kathleen Butz, Third District Court of Appeal. He has also worked at the National Labor Relations Board. Mr. Shiners serves as an adjunct instructor of appellate advocacy at the McGeorge School of Law.

Chair Neuwald welcomed Mr. Shiners on behalf of the Board.

**Motion:** Motion by Member Dowdin Calvillo and seconded by Member Wesley to close the February 7, 2008 public meeting.

**Ayes:** Neuwald, McKeag, Wesley, Rystrom, and Dowdin Calvillo.

**Motion Carried.**

Chair Neuwald opened the meeting of April 10, 2008, and Member Dowdin Calvillo led in the Pledge of Allegiance to the Flag.

### **Minutes**

**Motion:** Motion by Member McKeag and seconded by Member Rystrom that the Board adopt the minutes of the Public Meeting of PERB for February 7, 2008.

**Ayes:** Neuwald, McKeag, Wesley, Rystrom, and Dowdin Calvillo.

**Motion Carried.**

### **Comments From Public Participants**

None.

### **Staff Reports**

#### a. Administrative Report

Chair Neuwald provided the administrative report on behalf of Chief Administrative Officer Eileen Potter who was absent from today's meeting. She reported on matters related to the budget and the progress with regard to PERB's Los Angeles Regional Office (LARO) relocation.

In regard to the budget Chair Neuwald reported that the Legislature is in session and PERB is in the midst of budget hearings. To date, the Legislature has not taken any action on PERB's budget and the status of hearings is as follows: a hearing was held with the Assembly where PERB's budget was left open for further deliberations, which should occur in late April or early May; and a hearing with the Senate should occur sometime in early May.

Chair Neuwald reported that the LARO relocation is progressing with a possible move to the Glendale area. PERB is diligently working with the Department of General Services in regard to any matters related to this relocation to a new site.

b. Legal Report

General Counsel Tami Bogert reported that the case processing and litigation reports had been distributed to the Board for its review. Included in the case processing report is information regarding investigations and staff disposition of cases filed with PERB (cases filed include unfair practice charges, representation matters, and impasse requests). During the months of February and March, case processing was summarized as follows: 201 new cases were filed; 169 case investigations were completed; and 54 informal settlement conferences were held. Also during this same two-month period, five requests for injunctive relief were filed and completed as follows: one was withdrawn by the charging party, and four were considered and ultimately denied by the Board.

In regard to litigation, Ms. Bogert reported on recent court developments. The Sixth District Court of Appeal issued a published opinion in one of the essential employee strike cases holding that PERB has exclusive initial jurisdiction over whether employees whose services are essential to municipal health and safety can strike. (City of San Jose v. Operating Engineers Local Union No. 3 (Local 3), Sixth Appellate District, Case No. H030272, Santa Clara County Superior Court Case No. CV064707.) On this same issue, PERB is waiting for decisions from the First and Third District Courts of Appeal. The case in the First District Court of Appeal, in which two cases were consolidated, has been submitted as of late March. PERB anticipates a decision from that court sometime within the next 90 days. (County of Contra Costa v. Public Employees Union Local One et al. / County of Contra Costa v. CA Nurses Assn. et al., First Appellate District, Case Nos. A115095, A115118, Contra Costa County Superior Court Case Nos. MSC0601228, MSC0601227.) In the Third District Court of Appeal, which also has two cases that were consolidated, briefing was completed last summer. (County of Sacramento v. AFSCME Local 146 et al. / County of Sacramento v. AFSCME Local 146 et al., Third Appellate District, Case Nos. C054060, C054233, Sacramento County Superior Court Case Nos. 06AS03704, 06AS03790.)

A determination was also made by the Third District Court of Appeal in Gary Lee Schoessler v. PERB et al., Case No. C058004. On PERB's motion, the court dismissed this case for lack of subject matter jurisdiction. The petitioner in this case sought to challenge the Board's decision to affirm a Board agent's dismissal of the unfair practice charge. Ms. Bogert reported that an appeal has been filed in the case in the California Supreme

Court and PERB's answer to that appeal was due Monday, following today's Public Meeting.

In conclusion, Ms. Bogert reported on California Faculty Association v. PERB et al., Case No. C054725, where in February of this year, the Third District Court of Appeal issued a published opinion. There has been no appeal filed in the California Supreme Court and this case is now final.

Chief Administrative Law Judge McMonigle reported that the report for March had been distributed to the Board for its review. In this fiscal year to date, the administrative law judges (ALJs) have completed 35 formal hearings with a total of 122 hearing days. In March, nine new formal hearings were assigned. Currently, the average time for writing decisions is under 70 days and the median number of days is under 50. Chief ALJ McMonigle reported that with seven ALJs, caseloads are more manageable with cases being scheduled for formal hearing within 60 to 90 days of the informal settlement conference, which is a traditional goal of the agency. He stated that timelines are progressively improving for all tasks assigned within the division.

Member Dowdin Calvillo recognized Chief ALJ McMonigle, the ALJ staff and Les Chisholm for providing both her and her Legal Adviser, Erich Shiners, with an overview of the PERB process. She stated that it was very helpful and she thanked them for taking the time to summarize the complaint and appeal process.

Chair Neuwald explained that when new Board Members join the agency, PERB staff does a great job of bringing them in with their legal advisers, and offers a tutorial on basic case law and history of the statutes. It proves to be very beneficial and provides insight into the job the agency performs. She expressed appreciation for the efforts of staff in this regard.

Member Dowdin Calvillo inquired whether Chief ALJ McMonigle had any feedback from the parties regarding the division's improved timelines for setting the dates for formal hearings. Specifically, she asked whether the parties had noted that hearings were now being set two to three months rather than four to five months from the date of the informal settlement conference.

Chief ALJ McMonigle responded that several advocates have expressed that they are much happier with the situation. Other feedback received indicates that the parties appreciate these improved timelines.

c. Legislative Report

Les Chisholm, Division Chief, Office of the General Counsel, reported on legislation that affect matters within PERB's jurisdiction or are of interest. Mr. Chisholm reported that since the last Public Meeting, Senate Bill 867 (Cedillo) was vetoed by the Governor. SB 867 would have provided collective bargaining rights to child care providers in California and would have required PERB to process petitions for representation and where necessary, to conduct elections. Mr. Chisholm also reported on Senate Bill 1296 (Corbett), which is a

bill that would amend the Meyers-Miliias-Brown Act to provide that actions or disputes, or the application of locally enacted interest arbitration procedures, would be within the jurisdiction of the superior courts rather than PERB. SB 1296 passed out of the Senate Committee on Judiciary earlier this week and was referred to the Appropriations Committee. PERB will continue to monitor the status of this bill. Mr. Chisholm continued, reporting that Senate Bill 1718 (Perata) was amended this week. SB 1718 as originally introduced would have prohibited me-too or parity clause agreements under three of the statutes that PERB enforces. The bill now has been changed to provide instead for a salary survey and setting of salaries for employees in State Bargaining Unit 2 (attorneys, administrative law judges and hearing officers), by comparison with other public sector legal professionals in California. The methodology under this bill would be worked out by the State and the exclusive representative of Unit 2. SB 1718 is scheduled for hearing on Monday.

Chair Neuwald asked whether there was a sponsor for SB 1718 and mentioned that the bill had recently been amended.

Mr. Chisholm responded that he did not know for a fact whether there was a sponsor for this bill.

Member Dowdin Calvillo thanked Mr. Chisholm for his participation in her training when she first joined PERB.

**Motion:** Motion by Member Wesley and seconded by Member McKeag that the Administrative, Legal (including General Counsel and Chief Administrative Law Judge), and Legislative Reports be received.

**Ayes:** Neuwald, McKeag, Wesley, Rystrom, and Dowdin Calvillo.

**Motion Carried.**

### **Old Business**

None.

### **New Business**

Chair Neuwald announced that PERB will hold its next Advisory Committee meeting on June 12. Advisory Committee meetings are informal and provide an open forum for staff and constituent communication regarding various topics of interest relating to PERB. This meeting will immediately follow the PERB Public Meeting, which is to be held on the same day. Written confirmation of this meeting will be available soon.

Chair Neuwald also announced an improvement that was made to the PERB website. In particular, with regard to the online PERB Decision Bank, cases are now flagged when a judicial appeal is pending or when a Board decision has been overruled/vacated, in whole or in part, by subsequent Board or court action. Email alerts are also available for this information.

### **General Discussion**

There being no further business, the meeting is recessed to continuous closed session.

The Board will meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through June 12, 2008, when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. code sec. 11126(c)(3)), personnel (Gov. Code sec. 11126(a)), pending litigation (Gov. Code sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code sec. 11126(e)(2)(c)).

**Motion:** Motion by Member Rystrom and seconded by Member Dowdin Calvillo that there being no further business, the meeting be recessed to continuous closed session.

**Ayes:** Neuwald, McKeag, Wesley, Rystrom, and Dowdin Calvillo.

**Motion Carried.**

Respectfully submitted,

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Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

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Karen L. Neuwald, Chair